

IN SENATE OF THE UNITED STATES.

MARCH 2, 1846.

Submitted, and ordered to be printed.

Mr. SEVIER made the following

REPORT :

[To accompany bill S. No. 102.]

The Committee on Indian Affairs, to whom were referred the public documents and testimony of James Erwin, of Arkansas, soliciting relief for himself, and for himself and the heirs and legal representatives of his late partner, Daniel Greathouse, now deceased, have had the same under consideration, and report:

That the said James Erwin, on the 30th of October, 1834, entered into a contract with Captain Jacob Brown, of the United States army, and principal disbursing agent of the United States for Indian removals west, to furnish to the United States, at several specified places, a quantity of corn, beef, salt, and a number of pack-horses, wagons, teams and teamsters, for the subsistence and transportation of a large number of Creek Indians, then about to be removed from Georgia and Alabama to their new homes, west of Arkansas; and that the said Erwin, in compliance with his contract, (a copy of which, with the petition and the testimony, is appended to this report,) did provide and have ready, at the times and places required, the stipulated quantity of corn and beef and salt, and a number of wagons, teams, &c. &c., to carry out, in good faith, his contract with the United States.

It further appears, that after he, the said Erwin, had so prepared himself to comply with his contract, by great exertion, expense, and trouble, *no Indians came* to consume the corn, beef and salt, or to give employment to his pack-horses, wagons, teams, and teamsters; and that, in consequence of this failure on the part of the Indians to emigrate, he sustained (if not a total) a heavy and ruinous loss, and asks the United States to pay him for his losses. He avers that he has had no remuneration of the United States for these losses, on the ground that the United States, under the contract, were not bound to pay for any accidents, or for any other rations than those used; and as the failure of the Indians to emigrate was accidental, and as no rations, "*more or less*," were used, the United States claim to be irresponsible for the losses of Mr. Erwin. It is true that there are such covenants in the agreement; and, if the failure had been but partial, either in the diminution or excess of emigrating Indians, the committee would not be disposed to interfere in the matter. But a *total failure*, wholly unexpected by the United States and by the contractor, resulting in great loss to

him, amounting to absolute pecuniary embarrassment, presents a strong case of equity, and is deemed by the committee well worthy of a favorable consideration; and so considering this case, they have reported a bill authorizing the Secretary of War to investigate this claim, and to allow to said Erwin whatever losses he may satisfactorily show to the Secretary of War he has sustained in consequence of the failure of said Indians to emigrate.

The committee further report, that afterwards, to wit: on the 31st day of December, 1835, about 14 months after entering into this first contract, the aforesaid James Erwin and a certain Daniel Greathouse, now deceased, entered into two contracts with the aforesaid Captain Jacob Brown, of the United States army, and principal disbursing agent for Indian removals west, one of which was to *subsist* the *emigrating Seminole* Indians, and the other was for the *transportation* of said Seminole Indians from a place called "Rock Roe," on White river, in Arkansas, to the country set apart for them west of Arkansas. This contract resembles in its terms the contract for the removal, &c. of the *Creek* Indians, and resulted, as did the contract for the removal of the Creeks, in a total failure, and in great pecuniary losses to the contractors. The committee propose to indemnify the contractors for their losses in this case also, and have incorporated it in the bill aforesaid. They find a precedent for these cases in the act for the relief of Richard T. Banks, passed in August, 1842; and to that bill, and to the report accompanying it, they refer.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

Your petitioner, James Erwin, (for himself, and also as survivor of Daniel Greathouse, late partners in two contracts with the government of the United States, as hereinafter more particularly mentioned,) who is a citizen of the county of Pulaski, in the State of Arkansas, humbly represents:

That on the 30th October, 1834, your petitioner entered into a contract with Captain Jacob Brown, of the United States army, and principal disbursing agent of the United States for Indian removals west; by which contract your petitioner bound himself to deliver to the proper agent of the United States all rations, more or less, for subsistence of Indians, as also corn for team and pack-horses and oxen, together with fresh beef for team drivers; all which he bound himself to furnish in such quantities as should be required by the proper agent of the United States, at three several points in the said State, to wit: at the house of Mrs. Black, in the Grand prairie, at his own house, (James Erwin's,) and at the house of Samuel Newell, near Palarm bayou; each of which points is distant from each other at least 25 miles; and he was also bound to keep such supplies on hand at the places aforesaid, from the 10th November, 1834, to the 1st April, 1835; the rations to consist of one pound of fresh beef, three-fourths of a quart of corn, four quarts of salt to each 100 rations, one pound of fresh beef to each team driver, eight quarts of corn for each horse or ox worked in team, and four quarts of corn for each pack-horse; all of which was to be delivered in

good order, and to be delivered and issued at the own proper cost and charge of your petitioner, and under the immediate supervision and inspection of an agent of the United States, to be present. For all which, the United States agreed to pay your petitioner 5½ cents for each ration, 60 cents per bushel for corn for horses, &c., and 3 cents per pound for beef. And it was also stipulated, that, if your petitioner failed to deliver the aforesaid supplies according to agreement, the United States should, at his cost, supply any deficiency.

That, at the time this contract was made, it was confidently believed by the said Captain Brown, as he assured your petitioner, that 5,000 Indians would emigrate at that time, and that he would have to prepare supplies for that number—two rations for each Indian at each station—making thirty thousand rations which had to be supplied: ten thousand being necessary at each station. In the full belief of this assurance, your petitioner, at immense labor, trouble, and expense to himself, laid in all the supplies for that number of Indians, and had them on the ground awaiting their arrival; which he kept on hand until the contract was about to expire by its own limitation, when the said Captain Brown, by letter dated 29th December, 1834, wrote your petitioner that he had then not received official information of the number of Creek Indians which would remove that winter, or at what time they might be looked for, "*but thus far it is a total failure;*" and says, "As you doubtless have deposited corn, and made other arrangements at the stands you have contracted to fill, and it is believed there will be a considerable emigration of Creeks, Cherokees, and Seminoles next spring and summer, should you consider the furnishing of them would be to your interest, at prices and on terms of present contracts, the privilege of supplying them up to 30th September next (1835) is offered to you; which, if accepted, will be considered as an extension of present contracts to that date:" all which will appear by the aforesaid letter itself, hereto annexed, marked A, and prayed to be taken as part hereof. That your petitioner did accept of said last-named proposition, and continued said supplies up to the 30th September, 1835; up to which time the coming of Indians, and demand for supplies furnished and ready for them at the stands aforesaid, was another "*total failure;*" and your petitioner lost all.

That a bill of the items of his loss is accurately set forth in an account hereto annexed, marked B, and prayed to be taken as part hereof.

Your petitioner further states, that, under said contract, he proceeded in good faith to purchase his supplies to fulfil the contract, and deposite them in ample quantity at the three several depots at which he was bound to have them. The points at which those supplies were to be deposited are distant from each other about 30 miles, in a thinly populated country, where as large an amount of provisions necessary for so large a number of men could with great difficulty be obtained; and their procurement was attended with great trouble and expense; and, when collected, if not needed at the points deposited, (as was the case here,) their value amounted to just about nothing at all. There was not, nor could there be, any demand therefor; the inhabitants of the country were all small farmers, residing far from any navigable water, and the expense necessary to carry such bulky articles to market would have cost more than could have been realized by their sale when at market. Owing to these circumstances, peculiar to the country at that time, the failure of the government to have the Indians on the ground, according to the implied terms of the contract, resulted in entire and ruinous loss to

your petitioner, and has left him no other remedy than the bounty of the American Congress ; which, from the precedent already established in a similar case, he doubts not will afford him that relief to which, in justice and right, he is clearly and fairly entitled.

Your petitioner further represents that, on the 31st day of December, 1835, himself and one Daniel Greathouse, of the same county, entered into two other contracts with said Captain Jacob Brown—one for the subsistence, and the other for the removal of Seminole Indians ; by the first of which, it was agreed that they should have ready for delivery all rations and subsistence for Indians, teams and team drivers, corn and forage for teams, horses, and oxen, more or less, at Rock Roe, Mrs. Black's aforesaid, and at the house of your petitioner—the ration to consist of the same as in the first above mentioned contract, except that each work-horse and ox should have four pounds of fodder, in each ration, in addition ; which was to continue in force at Rock Roe till the 1st, and at the other points till the 31st March, 1836, upon terms similar, or nearly so, to those of the first mentioned contract ; that in conformity to this agreement, your petitioner and said Greathouse had ready, at the various depôts aforesaid, all supplies, in accordance with their stipulations, but suffered the same disappointment which attended the enterprise of your petitioner in his first contract ; that the two contracts, hereinbefore mentioned, for the subsistence, are not in the possession or control of your petitioner, but copies thereof, certified by the Commissioner of Indian Affairs, are hereto annexed, and marked contracts numbers *one* and *two*, respectively ; that the other contract entered into by your petitioner and said Greathouse, for the removal of Indians from Rock Roe towards their new homes west of the frontier of this State, stipulated that your petitioner and his partner should furnish, and have ready at Rock Roe, such number of substantial five-horse or six-ox wagons and teams as should be necessary, not exceeding sixty, for the purpose of transporting Seminoles on their route, together with their baggage ; each wagon to take not exceeding 3,000 pounds, and have large bodies convenient for storing articles of baggage securely—the teams to be in good working condition. It was further stipulated, that the contractors aforesaid should receive for each wagon and team \$4 for each day employed, and \$4 for each twenty miles of travel in returning from the place of discharge ; it was also stipulated that all wagons which should be at Rock Roe according to agreement, and not be required, should receive \$1 50 per day until notified to quit ; by virtue of which last stipulation, your petitioner and said Greathouse received the sum of \$574 50, which was all and every particle received for all said services, and for all the provisions, corn, and forage supplied. Your petitioner has not a copy of the last mentioned contract certified from the Indian Office, but has the *original duplicate*, made off at the time, but which is not signed by any person, as it was not at the time deemed necessary that it should be signed, but was made off, and one signed by all parties and forwarded to the department at Washington ; but the original duplicate, partly in the handwriting of said Brown, and part in the handwriting of Mr. Veazie, who was his clerk at the time, and a part thereof being in pencil, is hereto annexed, marked *contract number three*.

Your petitioner further represents that, under said contracts, he was loser to the amount of \$8,047 82 ; that after the first contract had, in the language of said Captain Brown, so "*totally failed*," he had no relish for a new contract ; but, from the letter of said Captain Brown, and conversations

with him, the publications in the newspapers, and general fame, all combined to render it certain that the Indians would come on and consume the provisions supplied, and employ the wagons furnished; that believing this, in the full reliance that no failure could occur, your petitioner entered into those contracts, and lost nearly the whole of his property in the fruitless adventure, and this, too, without fault or miscarriage on the part of petitioner. No pains were by him spared, and he thinks the evidence to be adduced in support of this petition will fully bear him out in saying that he did all which man could do on his part; in short, he *satisfied* the agents of the United States.

That the supplies furnished perished on his hands in consequence of there being no market whatever for them; they were many miles from navigation, in a country without people and without means. The moment it was ascertained that the Indians would not move, no person would purchase the supplies, for the very good reason that it would have been throwing money away.

That in the last mentioned contract, it was fully expected that at least 3,000 Indians would move, and your petitioner supplied his rations for that number, and, besides 25 wagons which he had on the ground, had 35 others engaged, which could be brought on to the ground; that, in order to do this, he had to bring corn and wagons 130 miles; bringing his wagons from the greatest distance first, so that a larger number should be required, those being in his more immediate neighborhood could be called in at short notice and be ready.

Your petitioner further states, that the account he has made off contains a true and fair statement of the amount of rations furnished, and that no greater amount was furnished than he had reason to believe, and was informed by the said Captain Brown, would actually be needed.

Your petitioner further states, that one Richard T. Banks was also engaged in the same contract, or rather on the same line of travel with your petitioner, and your petitioner and said Greathouse; the beginning of the contract of Banks being at the point where those of your petitioner ended; the whole line of travel being from White river to the Indian country. Your petitioner's contracts extended from White river to the settlements on the Arkansas, and those of Banks, from where those of your petitioner ended, to the Indian line. The country through which Banks supplied was one filled with settlements, where everything he had contracted for was comparatively plenty; corn, fodder, and beef could be had in reasonable quantities, at small prices, and at short distances; while the country through which the contracts of petitioner extended was a level prairie, unsettled country, with no house for more than twenty miles; each load of corn to be hauled a great distance, sometimes, as was the case with seven loads, a distance of 130 miles. For the losses which said Banks sustained, Congress has remunerated him, when, in truth, and in fact, his expenses and trouble certainly could not have been more than half what attended the contracts of your petitioner and his partner.

That the said Daniel Greathouse died soon after the failure of their prospects under the last two contracts, in consequence of exposure during the time he and your petitioner were fulfilling their parts of said contracts.

That many persons, whose knowledge of every material fact connected with the foregoing statement was complete, and, if called upon, might have proven more than is herein alleged and substantiated, have died, and left it

a difficult matter to furnish such full proof as might, when the matters were new and lately transpired, easily be made.

That your petitioner made off once, and presented to Congress, an account, showing the amount of his losses, which was not acted upon, owing to there being nothing, save the account itself, which showed the nature or amount of the transactions.

In tender consideration whereof, and for that your petitioner is wholly remediless in the premises, except by grant from Congress, your petitioner prays that an act may be passed for his relief and for the relief of the heirs of the said Greathouse, (who, indeed, are as much in need of relief as your petitioner,) and that the sum of \$2,583 68 may be appropriated for the sole benefit of your petitioner, and the further sum of \$5,464 14 for the joint benefit of your petitioner and the heirs of said Greathouse; and, as in duty bound, will ever pray, &c.

STATE OF ARKANSAS, }
County of Pulaski. }

I, James Erwin, the petitioner in the foregoing petition named, do solemnly swear that the statements made, and contained in the foregoing petition, are true to fact. So help me God!

JAMES ERWIN.

Sworn to and subscribed by James Erwin before me, Joseph Fenno, an acting justice of the peace for said county, this 15th day of January, A. D. 1845.

JOSEPH FENNO, J. P.

EXHIBIT A.

LITTLE ROCK,
Arkansas Territory, December 29, 1834.

DEAR SIR: As yet I have no official information of what number of Creeks will remove this winter, and, if any, at what time they may be looked for. Thus far it is a total failure. A small party is, however, spoken of, but how many and when they will reach you is unknown to me. As you doubtless have deposited corn, and made other arrangements at the stands you have contracted to fill; and as it is believed there will be a considerable emigration of Creeks, Cherokees, and Seminoles next spring and summer, should you consider the furnishing of them would be to your interest at prices and on terms of present contracts, the privilege of supplying them up to the 30th of September next, (1835,) is offered to you, which, if accepted, will be considered as an extension of present contracts to that date.

You will be pleased to inform me, by letter, whether it is your wish to furnish as above stated.

Very respectfully, your obedient servant,

J. BROWN,
Captain U. S. A., and principal disbursing
agent Indian removals.

JAMES ERWIN, Esq.,
Erwin's Settlement.

LITTLE ROCK,
Arkansas Territory, February 24, 1836.

GENTLEMEN: Convinced that none of the Seminoles will reach Rock Roe within the period named in the contract for furnishing teams for their removal, as therein stipulated, you will therefore consider this as a notice to discharge all teams you may have assembled at Rock Roe, or elsewhere, engaged in fulfilment of the contract above named.

Under the expectation that Lieut. Van Horne is at Rock Roe, I have addressed him on the subject of discharging the teams; but should he not be there, the date of the reception of this will be the period to which payment of the teams will be made.

Respectfully, I am, gentlemen, your obedient servant,

J. BROWN,

*Captain U. S. A., and principal disbursing
agent Indian removals.*

Messrs. ERWIN & GREATHOUSE.

EXHIBIT B.

The United States of America to James Erwin, Dr.

1834: To laying in supplies for 5,000 Indians, at Mrs. Black's, in Grand prairie; at and in the immediate neighborhood of my own house, at Erwin's settlement; and at the house of Samuel Newell, under contract with Capt. J. Brown, of the United States army, and principal disbursing agent, dated October 30, 1834, at 5 cents 5 mills for each ration, and 60 cents for each bushel of corn for teams. Two rations being required at each stand for each Indian—to wit:

Beef for 30,000 rations, at \$3 per hundred	\$900 00
Corn for 30,000 rations, being $\frac{3}{4}$ quart of corn for each, or 22,500 quarts, which, at 90 cents, the ration price, is	632 00
1,350 bushels of corn for teams, at 60 cents per bushel, the contract price	810 00
Salt for 30,000 rations, being 4 quarts to each 100 rations, being $37\frac{1}{2}$ bushels, at \$2 per bushel	75 00
	2,417 00
For furnishing supplies as above, under extended contract, from 1st April to 30th September, 1835, at 6 cents 2 mills per ration, and 75 cents per bushel for corn	166 68
Loss total on first contract	\$2,583 68

The United States to Erwin & Greathouse, Dr.

1835: To furnishing supplies for 3,000 Seminole Indians, at three stands—viz: at Rock Roe, Mrs. Black's, in the Grand prairie, and at my own house, (the house of James Erwin,) under contract of 31st December, 1835, with Captain J. Brown, of the United States army, and agent as aforesaid, at 5 cents 8 mills per ration of subsistence, and 65 cents per bushel

for corn for teams and horses; each Indian and teamster to have 4 rations at Rock Roe, and 2 at each other stand—viz:

Beef for 24,480 rations (for Indians and team drivers,) at \$3 25 per hundred, that being the ration price	\$795 60
Corn for 24,480 rations, $\frac{3}{4}$ quart for each ration, at 92 cents per bushel	563 04
Corn for 60 teams, 720 bushels, at 65 cts. per bushel	468 00
11,520 pounds of fodder for 60 teams, at $1\frac{1}{4}$ cents per pound	144 00
200 bushels corn for pack-horses, at 65 cts. per bushel	130 00
Salt for 24,480 rations, $30\frac{1}{2}$ bushels, at \$2 per bushel	61 00
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Hiring hands to drive and herd cattle, and pasturage for same cattle	2,161 64
60 teams engaged, 25 of which were on the ground, seven having to travel 130 miles at least, and to secure the attendance of which money had to be paid out; to those which did attend full pay was required, and those which were not actually on the ground, but in the neighborhood, and would come on notice, had to be paid before they would engage; also under contract 31st December, 1835	1,305 00
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	2,572 00
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	6,038 64

Cr.

By amount cash received from principal disbursing agent, on discharge of wagons, and it was ascertained that Indians would not travel	574 50
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Total loss on two last contracts - - - \$5,464 14
one half of which latter belongs to the heirs of Daniel Greathouse.

RECAPITULATION.

Lost on first contract, 30th October, 1834	2,583 68
Loss on two contracts of 31st December, 1835	5,464 14
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Total on all contracts	\$8,047 82

No. 1.

Articles of agreement, made on the thirtieth day of October, eighteen hundred and thirty-four, between Captain Jacob Brown, United States army, principal disbursing agent for the removal and subsistence of Indians, of the one part, and James Erwin, of the other part.

This agreement witnesseth, that the said Captain J. Brown, as aforesaid, for and on behalf of the United States of America, and the said James Erwin, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in manner following, to wit:

1st. That the said James Erwin hath covenanted to and with the said Captain J. Brown, as aforesaid, to deliver to him, the said Brown, or to such other agent or agents of the United States as shall have charge of the Indian emigrants at the time and at the places hereinafter named, all rations, more or less, for Indians, as well as corn for team-horses and oxen, and for pack-horses, and also fresh beef for the drivers of teams, that shall be required by said Brown or any agent or agents, as aforesaid, at Mrs. Black's, Grand Prairie, at James Erwin's, and at Newell's, near Palarm bayou, from the 10th day of November, 1834, to the first day of April, 1835. The rations to consist of one pound of fresh beef, three-fourths of a quart of corn, and at the rate of four quarts of salt for each one hundred rations; and to each driver of team one pound of fresh beef. The ration of forage to consist of eight quarts of corn for each work-horse or ox employed in the teams, and for each horse employed as a pack-horse four quarts of corn. All deliveries of corn and salt must be made by measure, and at the rate of thirty-two quarts, dry measure, to the bushel. The component parts of the ration, as above specified, must be of good quality and delivered in good order. All risk and every expense attending the furnishing and delivering the rations, as well as the distribution and issuing thereof, must be borne by the said James Erwin, contractor. All issuing of rations must be made by direction and under the inspection of the agent having charge of the emigrants, to whom the same will be delivered.

2d. That for and in consideration of the foregoing, the said Captain Jacob Brown, principal disbursing agent as aforesaid, for and on behalf of the United States aforesaid, agrees to pay to the said James Erwin, for each and every ration delivered as aforesaid, five cents five mills, and at the rate of sixty cents per bushel for corn delivered to work-horses and oxen, and to pack-horses, and three cents per pound for the fresh beef delivered to teamsters. Payments for the same to be made at Little Rock, A. T. For all deliveries made prior to the 20th day of December next, payments will be made between that date and the close of said month; and for all subsequent deliveries, at the expiration of this agreement, if the agent is in funds; if not, then as soon thereafter as funds shall be received for that purpose.

3d. That in case of failure or deficiency of quantity or quality of the rations to be delivered as above stipulated, then the agent or agents of the United States shall have power to supply such deficiency by purchase; and the said James Erwin hereby agrees to remunerate the United States for any increase of expenditure consequent thereon.

4th. That the United States will be responsible for no accidents arising under or growing out of the foregoing stipulations.

In witness whereof, the parties have hereunto placed their hands and seals, the day and date above written.

J. BROWN, *Capt. U. S. A.*, [SEAL.]
Principal disbursing agent Indian removal.
JAMES ERWIN, [SEAL.]

Witness—J. H. REED.

The securities for the performance of the above agreement are Daniel Greathouse and Thomas H. Ficklin.

No. 2.

Articles of agreement, made on the thirty-first day of December, eighteen hundred and thirty five, between Capt. Jacob Brown, U. S. army, and principal disbursing agent for the removal and subsistence of Indians, of the one part, and James Erwin and Daniel Greathouse, of the county of Pulaski, of the other part.

This agreement witnesseth, that the said Jacob Brown, for and on behalf of the United States of America, and the said James Erwin and Daniel Greathouse, for themselves, their heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in manner following, to wit :

1st. That the said James Erwin and Daniel Greathouse, their heirs, &c., shall furnish and deliver to him, the said Jacob Brown, or to such agent or agents of the United States as shall have charge of the Seminole Indians on their route of emigration west from Rock Roe to their new country on the Canadian, all rations of subsistence for said Indians, and for the drivers of teams, as well as all forage for team-horses and oxen, and corn for pack-horses, as shall be required, be the same more or less, at the following places, viz : at Rock Roe, south bank of White river ; at Mrs. Black's, Grand prairie ; at James Erwin's, Erwin's settlement. The ration of subsistence for each of said Indians and drivers of said teams to consist of one pound of fresh beef, three-fourths of a quart of corn, and four quarts of salt to each one hundred rations ; the ration of forage for each work-horse and ox of said team to consist of eight quarts of corn and four pounds of fodder or hay, and the ration of forage for each pack-horse to consist of four quarts of corn. The corn and salt to be delivered by the measure of thirty-two quarts, dry measure, to the bushel. The component parts of the above rations of subsistence for Indians, as well as the forage for the teams and pack-horses, are to be of good quality, and delivered by the said Erwin and Greathouse in good order ; and the said Erwin and Greathouse to be at all risk and every expense attending the delivery and distribution of the aforesaid rations of subsistence and forage ; the issues thereof to be made under the inspection and direction of an agent having charge of the Indians. The ration and forage for the stand at Rock Roe to be in readiness for delivery on the tenth of February next, 1836, and to be continued in readiness for delivery from date until called for by said agent ; and at each of the residue of said stands or places above named, the said rations and forage are to be in readiness for delivery as aforesaid at the respective times of the arrival of each detachment, or party of said Indians, teams, and pack-horses, at the stands respectively, and in quantities as shall be required proportionate to the number of Indians, team and pack-horses composing the detachment.

2d. And the said Jacob Brown as aforesaid, for and on behalf of the United States of America, agrees to pay to the said James Erwin and Daniel Greathouse, their heirs or assigns, for each and every ration furnished and issued by said Erwin and Greathouse as aforesaid, the sum of five cents and eight mills, and for each bushel of corn sixty-five cents, and for each pound of fodder and hay one and one-fourth cents, which payment is to be made at Little Rock, at the expiration of this agreement, on presenting the requisitions and receipts of authorized agents of the United States, of the

delivery of the rations and forage under this agreement, if the said Brown is in funds; if not, then as soon thereafter as funds shall be received for that purpose.

3d. That in case of failure or deficiency of quantity or quality of the rations of subsistence and forage to be delivered as above stipulated, then the agent on the part of the United States shall have power to supply such deficiency; and the said Erwin and Greathouse hereby agree to remunerate the United States for any increase of expenditure growing out of such failure or deficiency.

4th. That the contract continue and be in force in all the stipulations relative to furnishing and delivering rations of subsistence to Indians, and drivers of teams, and corn and fodder or hay to teams at the stand at Rock Roe, to the first day, and at all the other stands above named, to include the thirty-first of March next, 1836.

5th. That the United States will be responsible for no accident arising under and growing out of the foregoing stipulations.

In witness whereof, the parties have hereunto placed their hands and seals, the day and date above written.

J. BROWN, *Capt. U. S. A.*, [SEAL.]
and principal disbursing agent Indian removal.
 JAMES ERWIN, [SEAL.]
 DANIEL GREATHOUSE, [SEAL.]

Witnesses—

LUTHER CHASE,
 JAMES H. VEAZIE.

The security for the fulfilment of the foregoing contract is James B. Keatts and R. C. Byrd.

STATE OF ARKANSAS, {
County of Pulaski, { *set:*

I, Samuel Newell, of the county aforesaid, do solemnly swear, that James Erwin, in the latter part of the year 1834, or beginning of year 1835, (and I am not certain now as to the precise time, but it is nearly as above stated,) was a contractor with the United States agent to furnish subsistence for a large emigration of Indians which was then expected to pass through Arkansas, on their way west to their new homes. That my house was one of the stations at which deposits of forage and provisions were to be made; and my house was the only house on the road for about thirty miles. That said Erwin had at my house a large deposit of corn, which he had procured to be hauled there from a distance of about thirty miles at least; I cannot state the amount of corn in bushels, but, from the size of the cribs and the room occupied, I should think there were, at least, five or six hundred (500 or 600) bushels. He also had a large number of beef cattle at the same place for the same purpose, and he had, at least, from sixty to seventy head of beef cattle for the purpose. It is a long time since, and I cannot speak positively as to the precise quantity of cattle or corn, but it was my impression at the time that he had the necessary supplies for a large emigration. But the Indians never came, and the corn rotted and wasted in divers ways; the cattle ran off, and became almost an entire loss to Mr.

Erwin. I cannot tell how much Mr. Erwin lost by the Indians not coming, but he lost his corn and cattle, and had hauled the one and driven the other twenty or thirty miles, and often more, buying a little here, and a little there, a steer at one place and an ox at another, so that his time, and trouble, and expense in hiring help must have been great; and then he lost the whole of it.

SAMUEL NEWELL.

Sworn to and subscribed before me, an acting justice of the peace for said county, this 15th day of January, A. D. 1845.

JOHN W. GILBERT, J. P.

No. 3.

Articles of agreement, made on the 31st day of December, 1835, between Captain Jacob Brown, United States army, and principal disbursing agent for the removal and subsistence of Indians, of the one part, and James Erwin and Daniel Greathouse, of the county of Pulaski, of the other part.

This agreement witnesseth, that the said Jacob Brown, for and on behalf of the United States of America, and the said James Erwin and Daniel Greathouse, for themselves and their heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in manner following, to wit:

1st. That the said James Erwin and Daniel Greathouse, their heirs, &c., shall furnish and have in readiness at Rock Roe, south bank of the White river, on or before the 10th day of February next, 1836, and keep in readiness from that date for the space of twenty days, being to the 29th day of February following, inclusive, such number of good and substantial five-horse or six-ox wagons and teams as shall be required (not exceeding sixty) by such agent or agents of the United States as have charge of and are conducting the removal of the Seminole tribe of Indians from Rock Roe to their new country west; the wagons and teams so required to be employed in transporting the baggage, as well as such of the Indians as cannot walk, as shall be designated and regularly assigned to them by an agent for transportation, the same not to exceed in weight for each wagon and team three thousand pounds. The wagon bodies of all the wagons to be large and convenient for storage, as well as tight and well fitted for the good security of such articles as shall be placed therein for conveyance; and the team horses and oxen, when required to enter upon service, to be in good working condition. Said Erwin and Greathouse, contractors, to be at all and every expense of the teams at Rock Roe and elsewhere until required to receive loading and enter on service by agents as aforesaid, which requisitions are to be made in writing by the agents on said contractors, specifying the number of wagons and teams wanted, and the date they are to commence service and to be put under pay.

2d. That the said Jacob Brown, for and on behalf of the United States of America, agrees to pay to the said James Erwin and Daniel Greathouse, their heirs or assigns, for the service of each wagon and team employed in transporting the baggage, &c., of the aforesaid Seminole Indians from Rock Roe, four dollars for each and every day from the date of commence-

ment to the day of discharge, inclusive, and four dollars for each and every twenty miles returning from the place of discharge to the place of commencement; and for each and every team, from one to sixty, that shall actually be at Rock Roe, in virtue of this agreement, between the 10th and 29th of February as aforesaid, and shall not be employed or entered in the service as aforesaid, one dollar and fifty cents for each and every day so remaining at Rock Roe, or until notified that such team or teams will not be required. Said payments to be made at Little Rock on presenting the agent's certificate specifying the number of days each team has been employed, and the dates and places of commencement and discharge, as well as the number of miles distant from the place of discharge to the place of commencement; and for those teams that do not get employment, the number of days detained or remaining at Rock Roe. Said Brown further agrees for and on behalf of the United States to furnish the horses and oxen employed in the teams aforesaid, from the day of commencing to the day of discharge, eight quarts of corn and four pounds of fodder each per day.

3d. That in case of failure, in the whole or in part, to furnish the teams for the service as above stipulated, then the agent of the United States shall have full power to supply such failure or deficiency by hiring and procuring teams in manner most practicable; and the said James Erwin and Daniel Greathouse, contractors, agree to remunerate the United States for all losses and damages, and for all and every additional expenditure arising from or growing out of such failure or deficiency, or in any manner consequent thereon.

4th. That the United States will be responsible for no accidents arising under or growing out of the foregoing stipulations.

In witness whereof, the parties have hereunto placed their hands and seals the day and date above written.

Know all men by these presents, that we, James Erwin, Daniel Greathouse, James Pitcher, and William E. Woodruff, all of the county of Pulaski, are held and firmly bound to the United States of America in the sum of \$1,000 lawful money of the United States, for which payment well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, for and in the whole, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the 31st day of December, in the year of our Lord 1835.

The condition of this obligation is such, that if the above bounden James Erwin, Daniel Greathouse, James Pitcher, and William E. Woodruff, their heirs, executors, or administrators, or any of them, shall and do in all things well and truly observe, perform, fulfil, accomplish, and keep, all and singular the covenants, conditions, and agreements whatsoever, which on the part of said James Erwin and Daniel Greathouse, their heirs, executors, or administrators, are, or ought to be observed, performed, fulfilled, accomplished, and kept, comprised or mentioned in certain articles of agreement or contract, bearing date the 31st day of December, 1835, between Captain Jacob Brown, of the United States army, and principal disbursing agent for the removal and subsistence of Indians, and the said James Erwin and Daniel Greathouse, concerning the furnishing of wagons and teams accord-

ing to the true intent and meaning of the said articles of agreement or contract, then the above obligation to be void, otherwise to remain in full force and virtue.

In presence of

DEPARTMENT OF WAR,
Office Indian Affairs, December 12, 1843.

GENTLEMEN : Your letter of the 23d ultimo, addressed to the Secretary of War, has been referred, for answer, to this office.

The enclosed contracts, the first between Captain Jacob Brown and James Erwin, dated 31st October, 1834, the second between Captain Jacob Brown, of the one part, and James Erwin and Daniel Greathouse, of the other, dated 31st December, '35, are copied from our book of recorded contracts, in which, at the date of the records in question, it was not the practice to insert the bonds, but simply to state the names of the securities. The deficiency would have been supplied by reference to the original papers; but after a diligent search, made by the Second Comptroller, who is the depository of such originals, it appears that they cannot be found. Under these circumstances, I cannot more fully comply with your request, but trust that the within will serve your purpose.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

MESSRS. PIKE and BALDWIN,

Attorneys, &c., &c., Little Rock, Ark.

STATE OF ARKANSAS, {
County of Jackson, { *set:*

I, J. J. Waddill, of the said county, do solemnly swear, that under an agreement, made with James Erwin and Daniel Greathouse, about the beginning of the year of our Lord 1836, I furnished one wagon and team, consisting of five horses, for the purpose of removing the Seminole Indians from Rock Roe, on White river, in the State of Arkansas, to their new homes west. That I proceeded with the wagon and team aforesaid, from my residence, in said county of Jackson, the wagon loaded with corn, and containing from twenty to thirty bushels, to Rock Roe, aforesaid, a distance of one hundred and forty miles. That with the wagon and team aforesaid, I remained at Rock Roe sixteen days waiting for said Indians, who not arriving, I was discharged by said Erwin and Greathouse, and paid for my services, and my team, with the wagon, returned home. That the usual distance of my day's travel was twenty miles when not loaded, and the usual price for hire of wagon, team, and driver was four dollars per day, but the government furnished rations.

JAMES J. WADDILL.

Sworn to and subscribed before me, John Toney, an acting justice of the peace for said county of Jackson, this 20th day of August, A. D. 1844.

JOHN TONEY, J. P

STATE OF ARKANSAS, }
County of Pulaski, } *set:*

I, Pleasant McCraw, of the said county, do solemnly swear, that in the winter of the years 1834-'35, I was employed by James Erwin, of said county, to haul corn, for him, to Mrs. Black's, in the Grand prairie, for the subsistence of Indians and their horses and teams, then expected to remove through said State to their new homes west. I hauled for him, for that purpose, to said place, which was one of the stations on the road, two hundred and seventy-five bushels of corn, to the best of my recollection. I saw several other persons hauling corn there, and suppose that he (Erwin) must have had five hundred bushels or upwards at the said station. This corn was hauled a distance of twenty miles, most of the way over a bad muddy road, through the wet and mud of the prairie, in the winter season, when the roads are almost impassable. The above corn was all purchased by Mr. Erwin, in my immediate neighborhood, and at prices above those of ordinary times. The prices ranged considerably higher while the Indian emigration was expected, as that would afford a market close at home. There was no market, in fact, at that time. The country was very thinly settled, and little or no demand for corn, and to haul it to any navigation would have cost about as much as it was worth. After having hauled the corn, as aforesaid, I furnished a team of six oxen for removing the Indians. The Indians did not come, as they were expected, and the teams assembled for removing them were discharged. The corn, as aforesaid, was purchased by Mr. Erwin in my own immediate neighborhood, and some of it from myself, at about 50 cents per bushel; and further saith not.

PLEASANT McCRAW.

Sworn to and subscribed before me, Hamilton Reynolds, an acting justice of the peace, this 26th day of December, A. D. 1844.

H. REYNOLDS, J. P.

STATE OF ARKANSAS, }
County of Jackson, } *set:*

I, Andrew J. Daugherty, do solemnly swear that I was employed in the year 1836, by James Erwin and Daniel Greathouse, to furnish one wagon and team of three yoke of oxen to assist in removing Seminole Indians from Rock Roe, in the State of Arkansas, on White river, to their new homes west; with which wagon and team, I proceeded from my then home in Van Buren county, in said State, to Rock Roe, a distance of one hundred and fifteen miles, where, with the wagon and team aforesaid, I waited with many others, numbering between twenty and thirty wagons and teams assembled at that place for the same purpose as myself, for a period of sixteen days, waiting for the aforesaid Indians, who never, to my knowledge or belief, did arrive. At the end of which period of sixteen days, I was discharged with my wagon and team, and fully paid according to agreement with them. I remained sixteen days at Rock Roe with the said wagon and team, waiting as aforesaid. I hauled a load of corn of from twenty to thirty bushels to Rock Roe in my wagon.

ANDREW J. DAUGHERTY.

Sworn to and subscribed before me, John Toney, an acting justice of the

peace in and for Jackson county aforesaid, this 20th day of August, A. D. 1844.

JOHN TONEY, *J. P.*

STATE OF ARKANSAS, }
County of Jackson, } *sct :*

We, William Robinson and John Robinson, of the said county, do solemnly swear, that under an agreement made with James Erwin and Daniel Greathouse, about the beginning of the year of our Lord 1836, we furnished seven wagons and teams, each team consisting of five horses or six oxen, for the purpose of removing the Seminole Indians from Rock Roe, on White river, in the State of Arkansas, to their new homes west; that we proceeded with the wagons and teams aforesaid from our residence, in said county of Jackson, each wagon loaded with corn, and each load consisting of from twenty to thirty bushels, to Rock Roe aforesaid, a distance of one hundred and forty miles; that, with the wagons and teams aforesaid, we remained at Rock Roe sixteen days, waiting for said Indians, who not arriving, we were discharged by said Erwin and Greathouse, and paid for our services, and our teams with the wagons returned home; that the usual distance of our day's travel was twenty miles, when not loaded, and the usual price for hire of wagon, team, and driver was four dollars per day, but the government furnished rations.

WM. ROBINSON,
JOHN ROBINSON.

Sworn to and subscribed before me, John Toney, an acting justice of the peace for said county of Jackson, this 20th day of August, A. D. 1844.

JOHN TONEY, *J. P.*

STATE OF ARKANSAS, }
County of Pulaski, } *sct :*

I, Jonathan Hardin, at present a member of the general assembly of the State aforesaid, do solemnly swear, that in the winter of the years 1835-'36 I hired to James Erwin and Daniel Greathouse, for the purpose of removing Indians, who were then expected to remove through this State to their new homes west, one wagon and team of six oxen, which proceeded to Rock Roe, on White river, a distance from my residence, in Conway county, of eighty-five miles. That said wagon and team remained in their employ for that purpose about a fortnight or three weeks, the precise time not now remembered, and until it was found that the Indians would not travel, and the teams were discharged.

Messrs. Erwin and Greathouse also had large supplies of corn and fodder, and other supplies for rations for the said Indians, at Samuel Newell's, in Conway county aforesaid; which supplies were lost and rendered useless to them by reason of the Indians not removing; and further saith not.

JONATHAN HARDIN.

Sworn to and subscribed before me, James D. Fitzgerald, an acting justice of the peace for said county, this 27th day of December, A. D. 1844.

JAS. D. FITZGERALD, *J. P.*

STATE OF ARKANSAS, }
County of Pulaski, } *sect :*

I, Hamilton Reynolds, of the said county, do solemnly swear, that in the winter of the years 1835-'36, I was at Rock Roe, on the south bank of White river, in this State, at the time when James Erwin and Daniel Greathouse were there with wagons and teams, corn, fodder, and other provender for teams, to remove a large emigration of Indians, which was expected to remove through this State on their way to their new homes west. There were a large number of teams assembled for that purpose by Messrs. Erwin and Greathouse, from twenty to thirty, I should think, and were camped there waiting the arrival of Indians. Many of the wagons and teams were from a distance of over a hundred miles. I recollect the Robinsons, from Jackson county, were there with several teams, and they had to come a distance of one hundred and thirty miles or upwards. The wagons and teams had congregated from all directions, in the employment of Erwin and Greathouse, for the purpose, and remained there until it was certainly ascertained that the Indians would not remove, and they were discharged by the United States agent; and further saith not.

H. REYNOLDS.

Sworn to and subscribed before me, James D. Fitzgerald, an acting justice of the peace for said county, this 25th day of December, A. D. 1844.

JAS. D. FITZGERALD, *J. P.*

STATE OF ARKANSAS, }
County of Pulaski, } *sect :*

I, Luther Chase, of the county aforesaid, do solemnly swear, that in the year 1835 I was employed by Capt. Jacob Brown, of the U. S. army, at that time principal disbursing agent of the United States for Indian removals west, as clerk in his office, in which capacity the business of said office came under my own immediate observation, and I was in the habit of drawing up contracts for the removal and subsistence of Indians, and sometimes of seeing that the same were duly fulfilled; that, in the latter part of the year 1835, a large emigration of Seminoles being expected, proposals for contracts were published in the usual manner, and James Erwin and Daniel Greathouse took contracts for subsistence and removal from Rock Roe, on White river, towards the western frontier of this State; that it was with difficulty that contracts could be let out, owing to the many failures which had before occurred, and the people of the surrounding country, who were of sufficient means to fulfil a contract, did not like to run the hazard incident to Indian contracts at that time. Messrs. Erwin and Greathouse were induced, by what seemed the certain prospect of a large emigration coming on, to take contracts for subsistence and removal, that is, to furnish wagons and teams as well as corn, fodder, salt, beef, and provisions for the use of the Indians, and their teams and cattle. The teams were to be at Rock Roe aforesaid ready to receive the Indians and their baggage; the supplies to be at Rock Roe, at Mrs. Black's, in the Grand prairie, and at the house of said James Erwin. It was expected that above three thousand Indians would remove at that time; and teams, to between the number of twenty and thirty, twenty-five I think, were on the ground at Rock Roe waiting

the arrival of Indians. Corn, provender, and rations were prepared on the ground, ready and awaiting the Indians. I have the more particular recollection about this matter, because I was sent down by Capt. Brown for the purpose of informing the aforesaid contractors that the Indians would not move. In making this statement I have before me a copy of one contract for subsistence of Indians, between Capt. Brown and Erwin and Great-house, dated 31st December, 1835, which purports to have come from the office of the Commissioner of Indian Affairs; also another, which is the *duplicate* of the original contract entered into on the same day, between the same parties, the principal part of which is in the handwriting of one James Veazie, who was also a clerk in the same office with myself. A portion of the last named contract is written in pencil, and I feel very certain is in the handwriting of the said Capt. Jacob Brown. This last contract is for the removal or transportation of Indians and their baggage. Both these contracts, for subsistence and for removal, were fully complied with by the contractors. The Indians did not arrive, and the whole enterprise resulted in loss, great loss, I should think, but I have no present means for estimating the amount.

The copy of contract from the Indian department, as also the duplicate of the original contract herein referred to by me, are marked respectively A and B, and are so marked and endorsed by myself; and further saith not.

LUTHER CHASE.

Sworn to and subscribed before me, an acting justice of the peace for said county, this 13th day of January, A. D. 1845.

JOHN WASSELL, J. P.

STATE OF ARKANSAS, }
County of Pulaski, } *set* :

We, Charles G. Harris and Mary Black, of the county of Pulaski aforesaid, do solemnly swear that in the years A. D. 1834 and 1836, under and by virtue of two several contracts with the government of the United States, represented by Captain Jacob Brown, of the United States army, principal disbursing agent for Indian removals west, on the one hand, and James Erwin in one contract, and the said Erwin and one Daniel Greathouse, now deceased, of the other, there were deposited at the house of the deponent, Mary Black, in the Grand prairie, by the said Erwin, and Erwin & Great-house, large supplies of corn, beef, and forage for the subsistence of Indians, then expecting to pass through the State aforesaid, on their way to their new homes west; that these deponents, though residing at the spot at the times aforesaid, took no such particular notice of the number of bushels of corn, or head of cattle, or quantity of forage for horses, as now to state, with any thing like certainty, the precise amount of either, they then never expecting to be called upon for that purpose; but, from the room occupied in storing corn and fodder, they should think the corn must have numbered at least five hundred bushels, and the fodder five wagon loads; the beef cattle to have numbered fifty head at least; that at the times aforesaid the country was very thinly peopled, and the supplies aforesaid had to be hauled at least twenty miles, in the winter season each time, over a wet prairie country, where the land carriage was, and is even to this day, attended with extraor-

dinary difficulty and trouble ; but, at that time, bridges had not been built over streams which in summer were dry, but in winter difficult, and even dangerous to cross ; that the number of emigrating Indians, with their horses, teams, and cattle, were expected to be large, say eight thousand, including both parties expected to move ; and the contractors aforesaid had made extraordinary exertions to place at the place aforesaid, which was one of the *depôts*, a sufficient quantity of all things for the supply of which they had contracted ; and they did have on the spot, according to the best of the knowledge, judgment, and belief of these deponents, a sufficient supply of all things required of them by the agent of the United States government for the supply of these Indians ; that these supplies were kept on hand under the daily expectation of the arrival of Indians for months ; but no Indians came, and the collection of supplies resulted in disappointment, loss of time, labor, and money, expended in purchasing and collecting them, to a ruinous and lamentable extent. After it was ascertained that the Indians would not travel, the provisions were worth little or nothing to the contractors ; they had been collected at great distances and in small parcels, and driven and hauled to particular points, where they were expected to be consumed—to have carried them from thence to any place of sale would have nearly equalled their market value in costs of transportation. These deponents cannot tell how much loss was sustained, but, from the best lights within their reach, judge it must have been several thousand dollars. The provisions were valuable only for the purposes intended ; high prices had to be paid ; they must be had, and persons having any thing to part with looked well to the price obtained. The corn rotted and wasted away, the cattle died or ran off, and, finally, the whole enterprise resulted in very great loss to the contractors.

MARY BLACK,
CHARLES G. HARRIS.

Sworn to and subscribed before me, Dudley Glass, an acting justice of the peace for said county, this 19th day of December, A. D. 1844.

DUDLEY GLASS, J. P.

STATE OF ARKANSAS, }
County of Pulaski. }

I, Hamilton Reynolds, do solemnly swear, that, in the year 1835 or '36, James Erwin had a considerable quantity of corn at the house of James Dunaway, near his own residence, which he had purchased for the purpose of subsisting Indians that were expected to emigrate west ; and know that the most of said corn was lost to the said Erwin. The precise amount of corn I am not able to state, but suppose there must have been at least three hundred bushels. And that the said Erwin had a large supply of corn at his own residence for the same purpose, besides what he had at Dunaway's ; and know that the said Erwin had a considerable quantity of corn at Mrs. Black's, in the Big prairie ; and that the said Erwin himself was some considerable time engaged in collecting supplies at the various depots on the route, for the purpose of subsisting Indians that were then expected to emigrate west : and further saith not.

H. REYNOLDS.

Sworn to and subscribed by the said Hamilton Reynolds, before me, Joseph Fenno, an acting justice of the peace in and for said county, this 14th January, A. D. 1845.

JOSEPH FENNO, J. P.

STATE OF ARKANSAS, *set* :

I, David B. Greer, secretary of state of the State aforesaid, and keeper of the public records thereof, do hereby certify, that John Toney, of Jackson county, Dudley Glass, John Wassell, Joseph Fenno, James D. Fitzgerald, and Hamilton Reynolds, of the county of Pulaski, in this State, were, at the time of swearing the persons whose names are subscribed to the several affidavits annexed to the petition of James Erwin to Congress for remuneration for losses sustained, justices of the peace for the respective counties in which they exercised the power of administering said oaths ; and that full faith and credit are due to their official acts as such.

Witness my hand as secretary of state as aforesaid, and the seal of my [L. s.] office, at Little Rock, this 15th day of January, A. D. 1845.

D. B. GREER,

Secretary of State.

MARY BLACK

CHARLES C. HARRIS

H. REYNOLDS